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Paper No. 21

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OFFICE OF PETITIONS

In re Application of
Craig Hansen et al
Application No. 09/922,319
Filed: August 2, 2001
Attorney Docket No. 43876-128-CONT

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: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
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This is a decision on the petition filed by facsimile transmission on March 24, 2003, and supplemented on May 21, 2003, and May 29, 2003 under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment submitted May 29, 2003.

The petition is **Granted**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;¹
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the

¹ Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant application was filed on August 2, 2001 and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. § 120. Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859 .

The application is being forwarded to Technology Center Art Unit 2676 for processing the amendment filed May 21, 2003, and for processing and consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for the benefit of the prior filed nonprovisional applications and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

A handwritten signature in cursive script, reading "Frances Hicks".

Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy